



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: January 22, 2010

Release Number: 201017063

Release Date: 4/30/10

LEGEND

ORG = Organization name XX = Date

Address = address

ORG
ADDRESS

Person to Contact:
Identification Number:
In Reply Refer to: TE/GE Review Staff
EIN:

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: April 22, 20XX**

CERTIFIED MAIL – Return Receipt Requested

Dear

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective July 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. § 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. § 6001, 6033(a)(1) and the regulations thereunder.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending June 30, 20XX and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling, Tel: or write :

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Douglas H. Shulman
Commissioner
By

Nanette M. Downing
Acting Director, EO Examinations

Enclosures:

Publication 892
Publication 1546
Notice 437

Cc:



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

February 17, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Renee B. Wells
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended December 31, 20XX

LEGEND

ORG = Organization name XX = Date State = state President =
 President POA = POA DIR-1 = 1st Director

Issues:

1. Whether the ORG is liable for filing employment tax forms and the payment of accompanying employment related taxes for all quarters for the tax period ending December 31, 20XX and for the third quarter of 20XX.
2. Whether the ORG's exempt status under § 501(a) of the Internal Revenue Code (IRC) as an organization described in §501(c)(3) should be revoked, effective July 1, 20XX, because it did not meet the filing and informational requirements of IRC § 6001 and § 6033 and has ceased operations for 501(c)(3) purposes.

Issue 1- Facts:

The ORG (ORG) was incorporated under State state law as a non-profit organization on February 12, 19XX. The ORG was organized as to support to the public against big businesses such as insurance companies and hospitals when attempting to receive compensation for injury or financial loss as a result of negligence. The original mission was to educate the public on legislation and to conduct fundraisers to provide educational materials and website support.

According to the former and final president of the ORG, President, the organization ceased operations approximately September 20XX. President was the final officer in charge of closing the office. The organization did not file a final Form 990, nor did it file Articles of Dissolution in an attempt to terminate non-profit status. President appointed a power of attorney (POA), POA, to represent the entity during the examination. The ORG's largest contributor, provided the funds for POA's representation for the examination process only.

As the final president of the ORG, President represented the dissolved organization along with the POA during the initial interview conducted May 19, 20XX; however, he was unwilling to continue to provide information, documentation or interviews as he was dissociated with the ORG since its closure. No other former officer was willing to represent the entity.

The organization was created by the former executive director, DIR-1. DIR-1 was the only employee and compensated officer of the organization. In her position as executive director, DIR-1 was in sole control of all financial information, publication content and exempt activities for the organization. Although she did receive assistance with some administrative duties, DIR-1 was the controlling member of all aspects of the ORG.

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ORG		December 31, 20XX	

DIR-1 was removed by the Board of Directors for failing to execute her duties according to the ORG's bylaws. Due to lack of funding and interest in the continuation of the ORG by the Board of Directors, the organization ceased to exist upon DIR-1's termination.

The ORG reported salaries paid in the amount of \$\$ for the tax period ending June 30, 20XX on Form 990. The organization also reported \$\$ in salaries paid for the tax period ending July 30, 20XX on Form 990; however, IRS records indicates the amount as \$\$ from the organization's reporting of Forms 941 and W-2.

IRS records reveal the organization reported all employment tax information on Forms 941 and W-2 for all quarters for the tax period beginning January 1, 20XX and ending December 31, 20XX. The organization also filed Form 941 for the first and second quarters of 20XX. In addition, the ORG made one payment for tax period beginning July 1, 20XX and ending September 30, 20XX, yet neglected to file Form W-2 filed for the 20XX tax year.

In the Information Document Request (IDR) dated November 10, 20XX, the IRS requested books and records to explain financial discrepancies, ensure exempt status, and to explain the inconsistencies in the filing of all tax information; however, the books and records for the organization were not stored in a central location and could not be located.

In the same IDR, the agent requested Forms 941 and W-2 for all quarters for the tax period ending December 31, 20XX and for the third quarter of 20XX, ending September 30, 20XX. POA, POA, provided written notification to the agent on December 17, 20XX which maintained the Board of Trustees requested he cease any and all work on the ORG as this entity does not have funds and can no longer pay him for services. The agent followed up with the POA and received confirmation the requested documents and delinquent employment taxes would not be received.

Issue 1-Law

IRC § 3121(a) and § 3401(a) define wages as all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash.

IRC § 3121(d) and Treasury Regulation § 31.3121(d)-1(b) state an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

According to IRC § 3101(a), in addition to other taxes, there is hereby imposed on the income of every individual a tax equal to 6.2 percent of the wages for social security and 1.45 percent

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of wages for Medicare (as defined in section 3121(a)) received by him with respect to employment. In addition, IRC § 3111(a) maintains in addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the same percentages above.

IRC § 3402(a) states that every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables of computational procedures prescribed by the Secretary.

According to Treasury Regulation § 31.3121(a)-2(a), in general, wages are received by an employee at the time that they are paid by the employer to the employee. Wages are paid by an employer at the time that they are actually or constructively paid unless under paragraph (c) of this section they are deemed to be subsequently paid.

Under IRC § 6656(a), in the case of any failure by any person to deposit on the date prescribed therefore any amount of tax imposed by this title in such government depository as is authorized under § 6302(c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty equal to the applicable percentage of the amount of the underpayment. IRC § 6656(b)(1)(A)(iii) assesses 10 percent if the failure is for more than 15 days.

IRC § 6651(a) states that in the case of failure to file tax return or to pay tax that there will be in addition to the tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

Issue 1-Taxpayer's Position:

The ORG's representative acknowledges the requirement for the filing of the Form 941 and for the payment of employment taxes; however, the organization has ceased operations leaving no funds for the preparation and payment of such items. POA was informed by the Board of Trustees he is to take no further actions on behalf of the organization. No former officer or board member is associated with the dissolved organization and willing to supply the necessary forms or tax payments

Issue 1-Government's Position:

The organization's payment of the salary of \$\$ to the executive director for 20XX meets the definition of wages according to IRC §3121(a). There are some discrepancies in the reporting of the wages reported on Form 990 and information returns W-2 and 941's issued to the IRS;

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however, the wages paid to the executive director was determined to be \$\$ per quarter for an aggregate of \$\$ in the 20XX and 20XX tax periods and for \$\$ for the three quarters ending September 30, 20XX, based upon information supplied to the IRS and from existing books and records.

The executive director, DIR-1, primarily performed all functions of the organization and as such is considered an officer of the organization subject to the provision of IRC § 3121(d) and is considered an employee and subject to Social Security, Medicare and income tax and withholding as mandated by IRC § 3101(a), IRC § 3111(a) and § 3402(a).

DIR-1's wages were actually or constructively paid during all quarters of tax year ending December 31, 20XX and for the third quarter ending September 30, 20XX according to the requirements of Treasury Regulations § 31.3121(a)-2(a); thus, the obligation for employment taxes remain although the ORG is currently dissolved.

The organization has not supplied records to make an accurate determination of the correct wages paid for 20XX; however, the wages reported was substantially correct. No wages were reported for the third quarter of 20XX, yet the review of Form 990 for tax periods ending June 30, 20XX and June 30, 006 determined the organization paid \$\$ per quarter for every quarter from 20XX and the first two quarters of 20XX. This amount was determined as accurate for the tax period ending September 30, 20XX.

The organization has not established reasonable cause for the lack of filing or payment of required employment taxes. Therefore, the ORG is subject to the penalties as provided under IRC §6656(a) and § 6651(a).

Issue 1-Conclusion

The ORG is liable for the Social Security, Medicare, income tax withholding and penalties on wages paid to the executive director for the following:

Tax Period Ending	Social Security and Medicare	Withholding	Penalties
March 31, 20XX	\$\$	\$\$	\$\$
June 30, 20XX	\$\$	\$\$	\$\$
September 30, 20XX	\$\$	\$\$	\$\$
December 31, 20XX	\$\$	\$\$	\$\$
September 30, 20XX	\$\$	\$\$	\$\$
Total	\$\$	\$\$	\$\$

Issue 2-Facts:

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ORG		December 31, 20XX	

The organization ceased business functions by approximately September 31, 20XX. The officers in charge of closing the organization obtained the services of POA, POA, who was authorized to represent them during the course of the examination. An associated non-profit organization was willing to pay for his services for the examination only.

In an IDR dated November 10, 20XX, the IRS requested Articles of Dissolution and a final Form 990 in order to show termination of the organization. This IDR also requested the ORG supply books and records to prove exempt function activities and to explain discrepancies in the records received from the initial examination.

POA provided written notification to the IRS on December 17, 20XX which maintained the Board of Trustees requested he cease any and all work on the ORG as this entity does not have funds and can no longer pay him for services. The requested records were not supplied by the ORG based on this information.

Issue 2-Law:

IRC § 6001 provides that every person liable for any tax imposed by the IRS, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

IRC § 6033(a)(1) provides, except as provided in IRC § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC § 6033.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

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Treas. Reg § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Issue 2-Taxpayer Position:

The organization maintains the organization was an exempt organization until approximately September 31, 20XX. The organization was then dissolved and all debts were paid with no remaining funds. As the organization is no longer a continuing operation, and there are no funds to pay for the preparation filing final termination documents, the organization agrees to revocation.

Issue 2-Government's Position:

Section 6033(b) sets out an affirmative duty on the part of the organization to furnish annual information in such a manner as the Secretary may prescribe via forms or regulations. The organization has failed to provide the requested information despite adequate notice. Thus, the ORG has failed to show that it is observing the conditions required for the continuation of its exempt status.

Issue 2-Conclusion:

It is the Internal Revenue Service's position that the organization failed to meet the reporting requirements under IRC § 6001 and § 6033 to be recognized as exempt from federal income

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tax under IRC § 501(c)(3). Accordingly, the organization's exempt status is revoked effective July 1, 20XX. Form 1120 returns should be filed for the tax periods ending on or after June 30, 20XX.